

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1107**

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**Introduced by Assembly Member Blakeslee**

February 27, 2009

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An act to ~~amend Section 57004 of~~ *add Section 57006 to* the Health and Safety Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1107, as amended, Blakeslee. Environmental protection: California Environmental Protection Agency: rules: ~~scientific peer review~~ *economic analysis*.

Existing law requires the California Environmental Protection Agency, or a board, department, or office within the agency, to enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, or any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that are recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule, as defined to include specified regulations and policies, proposed by any board, department, or office within the agency, and prescribes procedures for conducting that scientific peer review.

~~This bill would make technical, nonsubstantive changes to that provision.~~

*This bill would, at or before the time a rule proposed for adoption is made available to the public at a public workshop or for purposes of public comment, require the California Environmental Protection*

Agency, or a board, department, or office within the agency, to complete and place into the rulemaking record an economic analysis, as defined, of the rule. The bill would also require the agency to solicit public comment on the economic analysis in the same manner as on the proposed rule.

The bill would allow any interested person, within 15 calendar days of the date of the public workshop or public hearing, to request the agency to submit the economic analysis to external peer review, and would prescribe procedures for conducting the external peer review.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The people of the State of California expect that their state*  
4     *government will enact laws and promulgate regulations to the*  
5     *general benefit of the people and that regulations promulgated*  
6     *will tend to maximize benefits to society while minimizing costs.*

7     *(b) Administrative and regulatory actions can have significant*  
8     *and far-reaching consequences for individuals, nonprofit*  
9     *organizations, and businesses throughout the state.*

10    *(c) Administrative and regulatory actions should be based on*  
11    *adequate information concerning the need for and consequences*  
12    *of the proposed action.*

13    *(d) Administrative and regulatory actions that maximize benefits*  
14    *to society while minimizing costs are preferable to actions that*  
15    *tend toward the opposite.*

16    *(e) The agencies, boards, departments, and offices of the state*  
17    *generally strive to promulgate regulations that benefit the people*  
18    *of the state.*

19    *(f) The Legislature has in numerous instances required that the*  
20    *agencies, boards, departments, and offices of the state take cost*  
21    *considerations into account when promulgating regulations.*

22    *(g) The Legislature has specifically required that the scientific*  
23    *basis of environmental protection regulations be subject to analysis*  
24    *and peer review.*

25    *(h) The costs and benefits of environmental protection*  
26    *regulations should be also subject to analysis and peer review.*

1     *SEC. 2. Section 57006 is added to the Health and Safety Code,*  
2     *to read:*

3     57006. (a) *For purposes of this section, the following terms*  
4     *have the following meanings:*

5     (1) *“Benefit” means the reasonably identifiable significantly*  
6     *favorable effects that are expected to result from implementation*  
7     *of, or compliance with, a rule.*

8     (2) *“Cost” means the reasonably identifiable significantly*  
9     *adverse effects that are expected to result from implementation of,*  
10    *or compliance with, a rule.*

11    (3) *“Economic analysis” means an evaluation of the costs and*  
12    *benefits of a rule, quantified to the extent feasible and appropriate*  
13    *and otherwise qualitatively described, that is prepared at a level*  
14    *of detail appropriate and practicable for reasoned decisionmaking.*

15    (4) *“Rule” means either of the following:*

16    (A) *A regulation as defined in Section 11342.600 of the*  
17    *Government Code.*

18    (B) *A policy adopted by the State Water Resources Control*  
19    *Board pursuant to the Porter-Cologne Water Quality Control Act*  
20    *(Division 7 (commencing with Section 13000) of the Water Code)*  
21    *that has the effect of a regulation that is adopted in order to*  
22    *implement or make effective a statute.*

23    (b) *At or before the time a rule proposed for adoption is made*  
24    *available to the public at a public workshop or for purposes of*  
25    *public comment, the agency, or a board, department, or office*  
26    *within the agency, shall complete and place into the rulemaking*  
27    *record an economic analysis of the rule and shall solicit public*  
28    *comment on the economic analysis in the same manner as on the*  
29    *proposed rule.*

30    (c) *Any interested person may, within 15 calendar days of the*  
31    *date of the public workshop or public hearing, request the agency,*  
32    *or a board, department, or office within the agency, to submit the*  
33    *economic analysis to external peer review. If the agency, or a*  
34    *board, department, or office within the agency, receives such a*  
35    *request, it shall enter into an agreement with the National Bureau*  
36    *of Economic Research, the University of California, the California*  
37    *State University, or a group of economists of comparable stature*  
38    *and qualifications that is selected by the President of the University*  
39    *of California, to conduct an external peer review of the economic*  
40    *analysis for any rule proposed for adoption if, within 15 calendar*

1 days of making the request, the person requesting the external  
2 economic analysis peer review enters into an enforceable  
3 agreement with the agency, or a board, department, or office within  
4 the agency, that requires that person to fully reimburse the agency,  
5 or a board, department, or office within the agency, for all of the  
6 costs associated with conducting the external peer review.

7 (d) (1) No person may serve as an external economic analysis  
8 peer reviewer for a proposed rule if that person participated in  
9 the development of the economic analysis of the proposed rule.

10 (2) The person who requested the economic analysis peer  
11 review, a person affiliated with the requester, and personnel of  
12 the agency, or a board, department, or office within the agency,  
13 shall not participate in the selection of the individual external  
14 economic analysis peer reviewers or contact or communicate with  
15 the individual peer reviewers during the pendency of the peer  
16 review. The identity of the individual peer reviewers shall remain  
17 confidential until the external economic analysis peer review entity  
18 submits its written report to the agency, or a board, department,  
19 or office within the agency. The agency, or a board, department,  
20 or office within the agency, may contact or communicate with the  
21 external economic analysis peer review entity for the purposes of  
22 entering into a contract with that entity, as described in subdivision  
23 (c), and for purposes of providing information as described in  
24 paragraph (1) of subdivision (e).

25 (e) The agency, or a board, department, or office within the  
26 agency shall not take any action to adopt the final version of a  
27 rule unless all of the following conditions are met:

28 (1) The agency, or a board, department, or office within the  
29 agency, submits the proposed rule, along with the economic  
30 analysis, findings, conclusions, and assumptions on which the  
31 economic analysis is based, and the supporting economic data  
32 and studies, public comment on the economic analysis, and other  
33 appropriate materials, to the external economic analysis peer  
34 review entity for its evaluation.

35 (2) The external economic analysis peer review entity, within  
36 the timeframe agreed upon by the agency, or a board, department,  
37 or office within the agency, and the external economic analysis  
38 peer review entity, prepares a written report that contains an  
39 evaluation of the economic analysis. The agency, or a board,  
40 department, or office within the agency may accept the findings

1 of the external economic analysis peer review entity, in whole or  
2 in part, and may revise the proposed rule accordingly. If the  
3 agency, or a board, department, or office within the agency  
4 disagrees with any aspect of the findings of the external economic  
5 analysis peer review entity, it shall explain, and include as part  
6 of the rulemaking record, its basis for arriving at that  
7 determination.

8 (3) A public hearing is conducted to provide opportunity for  
9 public comment on the written report of the external economic  
10 analysis peer review entity and any explanation of disagreement  
11 with the report included in the rulemaking record by the agency,  
12 or a board, department, or office within the agency. Notice of a  
13 public hearing on adoption of the final version of a rule shall not  
14 issue until the public hearing described in this paragraph is  
15 concluded.

16 (f) The requirements of this section do not apply to any  
17 emergency regulation adopted pursuant to subdivision (b) of  
18 Section 11346.1 of the Government Code.

19 (g) This section does not limit the authority of an agency, or a  
20 board, department, or office within the agency to adopt a rule  
21 pursuant to the requirements of a statute that authorizes or requires  
22 the adoption of the rule.

23 ~~SECTION 1. Section 57004 of the Health and Safety Code is~~  
24 ~~amended to read:~~

25 ~~57004. (a) For purposes of this section, the following terms~~  
26 ~~have the following meanings:~~

27 ~~(1) "Rule" means either of the following:~~

28 ~~(A) A regulation, as defined in Section 11342.600 of the~~  
29 ~~Government Code.~~

30 ~~(B) A policy adopted by the State Water Resources Control~~  
31 ~~Board pursuant to the Porter-Cologne Water Quality Control Act~~  
32 ~~(Division 7 (commencing with Section 13000) of the Water Code)~~  
33 ~~that has the effect of a regulation and that is adopted in order to~~  
34 ~~implement or make effective a statute.~~

35 ~~(2) "Scientific basis" and "scientific portions" mean those~~  
36 ~~foundations of a rule that are premised upon, or derived from,~~  
37 ~~empirical data or other scientific findings, conclusions, or~~  
38 ~~assumptions establishing a regulatory level, standard, or other~~  
39 ~~requirement for the protection of public health or the environment.~~

~~(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or a scientist or group of scientists of comparable stature and qualifications recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for a rule proposed for adoption by a board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.~~

~~(c) A person shall not serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.~~

~~(d) A board, department, or office within the agency shall not take any action to adopt the final version of a rule unless all of the following conditions are met:~~

~~(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.~~

~~(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the~~

1 ~~proposed rule accordingly. If the board, department, or office~~  
2 ~~disagrees with any aspect of the finding of the external scientific~~  
3 ~~peer review entity, it shall explain, and include as part of the~~  
4 ~~rulemaking record, its basis for arriving at that determination in~~  
5 ~~the adoption of the final rule, including the reasons why it has~~  
6 ~~determined that the scientific portions of the proposed rule are~~  
7 ~~based on sound scientific knowledge, methods, and practices.~~

8 ~~(e) The requirements of this section do not apply to any~~  
9 ~~emergency regulation adopted pursuant to subdivision (b) of~~  
10 ~~Section 11346.1 of the Government Code.~~

11 ~~(f) This section does not limit the authority of a board,~~  
12 ~~department, or office within the agency to adopt a rule pursuant~~  
13 ~~to the requirements of the statute that authorizes or requires the~~  
14 ~~adoption of the rule.~~